the address in CRIS without informing the CLEC that the address has been changed, than the provisioning notices transmitted to the CLEC may contain a different address for the customer then the CLEC has in its systems. Moreover, when the CLEC transmits a subsequent order for the customer, such as a feature change, the subsequent address transmitted will no longer match either CRIS or PREMIS. See McMillon, Sivori & Lichtenberg Decl. ¶¶ 45-47.

In short, while SWBT's service address proposal is commendable, it has not been implemented and will not resolve all of the issues associated with address mismatches. Resolving these issues will presumably require SWBT to compare its databases and eliminate mismatches. Id. ¶ 48. Unfortunately, however, because of SWBT's rush to re-file its application, the extent to which the service address proposal will help alleviate problems associated with database mismatches is unknown. That proposal is scheduled to be implemented the week after all reply comments are due in this proceeding, leaving the Commission once again faced with an inevitable round of ex parte filings during the last half of the ninety day review period based on limited data as to whether this change is working as promised. SWBT's application must be rejected with the instruction (again) that SWBT should file after it has "fully implemented" the competitive checklist – after it has fixed the systemic defects in its OSS and shown that the fixes work.

4. SWBT's Service Address Proposal Has Not Been Implemented and Does Not Eliminate the Need for Fully Parsed CSRs.

SWBT also contends that the need for CLECs to re-type addresses and the rejects that result will be eliminated with implementation of its service address proposal on May 27. Ham Supp. Aff. ¶¶ 22-27. Under this proposal, SWBT will no longer require CLECs to transmit

service address information on most migration orders. As noted above, MCI WorldCom strongly supports SWBT's proposal; indeed, the proposal stems from a change request by MCI WorldCom. MCI WorldCom believes that implementation of the proposal will significantly reduce rejects associated with service addresses. Nonetheless, this proposal has been neither implemented nor tested, and is not a panacea even if it works. Fully parsed CSRs are still required.

First, as with all systems changes, there is no way to be sure until it is implemented that SWBT's proposal will work as planned, without significant negative ramifications. McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 40. After SWBT receives a migration order from a CLEC, it intends to populate the service address on the order itself. In doing so, SWBT could make mistakes or could cause downstream problems, as discussed in the prior section.

Second, SWBT's service address change will not eliminate the need for CLECs to re-type service address information absent fully parsed CSRs. Although CLECs will not have to transmit service addresses on most migration orders, they will still have to type the address information into their back-end systems. See generally McMillon, Sivori & Lichtenberg Supp. Decl. ¶¶ 35-39. CLECs need to maintain a customer's address information in fielded format so that they can submit subsequent orders for that customer, such as orders to change that customer's features. These subsequent orders must contain the customer's service address in fielded format or they will be rejected. This is important because there will be a high volume of such subsequent orders. In New York, for example, MCI WorldCom has been submitting orders to modify a customer's existing service for more than 15% of its customers each month. McMillon, Sivori & Lichtenberg Reply Decl. ¶ 52. In addition, CLECs must maintain the

customer's address in fielded format in order to transmit trouble tickets, which must contain the service address, and in order to send bills to the customer. Thus, in the absence of a fielded address on the CSR, CLECs must re-type the address information from the CSR into their own systems. This is a significant waste of resources and can also lead to rejection of subsequent orders as a result of CLEC errors in re-typing the address. Third, even beyond subsequent orders, SWBT's service address proposal will not eliminate the need for CLECs to transmit address information obtained from the CSR on many initial orders. When an existing CLEC customer orders a second line, for example, the CLEC will have to transmit the customer's service address because SWBT considers that to be an order for a new connect, rather than a migration. In addition, CLECs will have to transmit service addresses on migration orders for xDSL loops. Ham Supp. Aff. ¶ 25. Finally, CLECs will have to transmit service address on migration orders whenever a "new" element is included with the conversion activity, such as when customers migrate their service and simultaneously add a second line. Ham Supp. Aff. att. I-2.

Finally, SWBT's service address proposal has no effect on the problems caused by SWBT's failure to provide directory names and directory addresses in fielded format. McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 39. CLECs must transmit all of this information to SWBT whenever customers change their directory listings – either when migrating to the CLEC or subsequently. Thus, for example, if a customer wishes to change the directory listing to include a spouse, the CLEC needs to transmit both the customer's existing directory listing and the new listing to SWBT in parsed format. CLECs should be able to obtain the existing directory listing from SWBT in fielded format and also use that fielded listing as a basis to create the new listing. Because SWBT provides the directory listing information in concatenated format, however, the

CLEC must re-type the directory listing information into its back-end systems after obtaining it at the pre-order stage. This is so even if customers do not initially want to change their directory listings, because the information will be needed if a customer later decides to change the listing. SWBT's service address proposal does nothing to eliminate this need for re-typing or the resulting rejects in the transmission of orders to change a customer's directory listing.

B. SWBT's LIDB Process Poses a Substantial Barrier to Entry.

SWBT provides inferior processes to enable CLECs to update LIDB after their initial orders and an operationally troublesome process for updating LIDB on those initial orders, as MCI WorldCom explained in its previous Comments. See MCI WorldCom Jauary 31 Comments at 14-17; McMillon & Sivori Decl. ¶¶ 80-94. Indeed, MCI WorldCom's early experience from its launch shows that SWBT's LIDB process for initial orders is more than operationally troublesome – it is an absolute failure.

LIDB is the database that houses the information needed to enable a customer to receive third party calls and make credit card calls. It also contains a customer's choice of intraLATA and interLATA PIC. Finally, information in LIDB triggers proper branding of a customer's operator and directory assistance calls. On January 15, SWBT implemented a new means for CLECs to transmit LIDB updates on initial orders to migrate the customer to the CLEC – transmitting the information on the initial LSR submitted to SWBT. That transmission method is a good one. Unfortunately, SWBT's method for processing the LIDB updates once it receives them appears to be deficient – just as MCI WorldCom anticipated that it would be based on SWBT's discomforting answers to MCI WorldCom questions about that method in January. McMillon & Sivori Decl. ¶ 87. After SWBT implemented its new transmission method, MCI

WorldCom submitted seventeen trial orders. On those seventeen orders, customers experienced twelve branding problems – an extremely high rate of problems. McMillon, Sivori & Lichtenberg Reply Decl. ¶ 31.

The process has not been fixed since then. Birch has complained repeatedly during change management meetings about problems it is experiencing with the process, including branding problems. Early data from MCI WorldCom's launch dramatically emphasizes the continued existence of such problems. First, and most significantly, on a very high percentage of orders, SWBT has incorrectly updated customers' intraLATA and interLATA PICs. MCI WorldCom has checked the LIDB records of 60 customers. For nineteen of those customers, SWBT provided the incorrect intraLATA PIC – in most cases, continuing to provide SWBT as the intraLATA PIC even though the customer had requested MCI WorldCom. Of the nineteen customers with the incorrect intraLATA PIC, nine also received the wrong long distance carrier – three received AT&T, one received Caprock, one received carrier number 432, and two received no PIC even though all of these customers had chosen MCI WorldCom as their long distance provider. Two other customers who had not chosen MCI WorldCom for long distance were PIC'd to MCI WorldCom. See McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 67. These types of errors will be disastrous. Customers will receive bills from the wrong carrier and will be billed at the wrong rate. They are likely to blame the CLEC for switching them improperly and may choose to switch local providers. They may also refuse to pay their intraLATA or interLATA bill. For those customers who are incorrectly PIC'd to SWBT and refuse to pay, this may result in disconnection of service. In addition, when SWBT fails to switch customers to

CLECs for intraLATA and interLATA service, CLECs are denied an important source of revenue. Id. ¶ 68.

Second, in addition to the nineteen customers who received an incorrect PIC, nine customers may have received no LIDB update at all (thus, continuing in the interim to have their existing PICs and branding). For these nine customers, MCI WorldCom was unable even to access their records, suggesting that they had not yet been updated to reflect that they were now MCI WorldCom records. This was so even though MCI WorldCom had received completion notices for the nine customers five or six days earlier. Id. ¶ 66. SWBT has provided conflicting explanations as to why MCI WorldCom might not be able to access such LIDB records, explanations tied to SWBT's defective three service order process and to its high level of manual processing – both of which are discussed below. Id. ¶ 71.

Third, some customers are receiving incorrect branding. Although it is difficult to check a customer's branding, MCI WorldCom has done so for six customers. Of these six, three are incorrectly receiving SWBT branding on operator and directory assistance calls and one is incorrectly receiving AT&T branding. Id. ¶ 72. Incorrect branding causes significant customer confusion and deprives CLECs of the advantage of increasing brand loyalty of their customers. Thus, SWBT's LIDB process for initial CLEC orders is far from ready. Id. Continued failures in this vital process will serve as a substantial barrier to MCI WorldCom's ability to expand service to commercial volumes of customers. Id. ¶ 73.

In addition to SWBT's lack of readiness to process LIDB updates that are part of a customer's initial order, SWBT fails to provide an adequate process for CLECs to transmit LIDB updates subsequent to those initial orders. Subsequent LIDB updates, such as PIC changes, are a

common type of order. For example, in New York, MCI WorldCom is presently submitting approximately six thousand to eight thousand such orders per month. McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 75.

Rather than allowing CLECs to submit subsequent LIDB changes through the LSR process used for other types of orders, and used by all other BOCs for LIDB updates, SWBT forces CLECs to rely either on faxes or on a graphical user interface ("GUI").[9/] Both of these processes are grossly inadequate. See id. ¶ 74. Instead of enabling the CLEC to rely on its existing customer record as a basis of creating the LIDB update order, these processes force the CLEC to enter an entirely new order into the GUI (or fax) and to enter the update request into its own systems. This dual data entry wastes resources and leads to errors. In addition, the GUI and fax do not return any status information to inform the CLEC that the request has been received and accepted, making it more difficult for CLECs to ensure that SWBT is indeed processing the customer's requested change. Moreover, the GUI and fax processes cannot even be used until the CLEC has received a completion notice on the customer's initial order, something that must be checked before the LIDB update is submitted. As a result of the inadequacies of SWBT's LIDB process, MCI WorldCom has been forced to hire additional personnel simply to oversee the LIDB process. Id. ¶ 75. In addition, if MCI WorldCom ramps up, it will be faced with delays and errors in transmission of LIDB updates, including PIC changes. SWBT does not even

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9/ CLECs can also develop a new interface to transmit LIDB updates, but this is a significant waste of resources given that SWBT plans in December to enable CLECs to submit LIDB updates using the superior LIDB process. The problem is that SWBT has refused to move this date forward and still has not released requirements for the new process.

intend to fix its LIDB process until December. SWBT's LIDB process therefore remains a key barrier discouraging MCI WorldCom from submitting a commercial volume of orders.

C. SWBT's Back-end Processes Create an Unnecessary Risk of Lost Dial Tone and Double Billing for Customers.

SWBT continues to create three service orders from every LSR for UNE-P, a Change Order (C order), New Order (N order), and Disconnect Order (D order), without implementation of any new process to ensure that the three sub-orders remain coordinated. If the orders do not remain coordinated, loss of dial tone, double billing, and a series of other problems can result. McMillon & Sivori Decl. ¶¶ 95-113; McMillon, Sivori & Lichtenberg Reply Decl. ¶¶ 26-29; MCI WorldCom Jan. 31 Comments pp. 11-14.

SWBT has acknowledged this issue, but has not yet come forward with the long term solutions it promised in December User Forum meetings to the multiple problems caused by this process. McMillon & Sivori Decl. ¶ 112. In an April change management meeting, SWBT stated that it had "too much else on its plate" to commit to doing away with the three service order process. Instead, SWBT argues that the three service order process is reliable and that "an analysis of AT&T's UNE-P conversion orders and trouble reports . . . demonstrated that only .7% of AT&T's UNE-P conversions in December 1999 and .8% in January 2000 resulted in loss of dial tone." Ham Supp. Aff. ¶ 31. Rather than demonstrating the reliability of SWBT's process, however, these numbers demonstrate the opposite. Lost dial tone of 0.7% or 0.8% translates into loss of dial tone for hundreds of customers a month at even relatively small volumes of orders. In contrast to more limited volumes associated with the provision of unbundled loops for business customers, successful UNE-P competition for residential customers

will easily result in 100,000 orders a month, a conservative figure based on New York volumes. SWBT's asserted loss rate would thus cause 700 to 800 residential customers each month to lose dial tone – hardly indicative of an irreversibly open market. With that amount of lost dial tone, local competition based on UNE-P will fail.

There is no excuse for such a high rate of lost dial tone. In New York, despite placing far more orders per month than SWBT handled in December or January, MCI WorldCom has not experienced any loss of dial tone on UNE-P migrations. McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 57.[10/]

Moreover, SWBT's reported rates of lost dial tone almost certainly underestimate the amount of lost dial tone that is occurring now and is likely to occur in the future. Id. ¶ 58. First, SWBT's data is not trustworthy given that it was not fully audited and SWBT is regularly forced to "reconcile" mistakes in its reports. Second, SWBT's data is for December and January when UNE-P order volumes were quite low. [11/] SWBT is currently hand-holding its low volume of orders to minimize disassociation and loss of dial tone, something that will no longer be possible when CLECs begin placing several thousand orders per day. McMillon & Sivori Decl. ¶ 111. Finally, SWBT's evaluation of lost dial tone is based on an analysis of trouble tickets. Yet not

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10/ The UNE-P process thus differs from the hot cut process where there is an inherent risk of loss of dial tone. The impact of loss of dial tone on the UNE-P customer is also potentially more severe than in the hot cut process. The hot cut customer knows when the cut is supposed to occur and thus can plan for the possibility of loss of dial tone; the UNE-P customer cannot do so. Moreover, the UNE-P residential customer needs continuous access to 911.

11/ SWBT states that the number of UNE loop/port combinations increased from December through February by 77,600. Habeeb Supp. Aff. ¶ 5. This translates to an average of 25,866 UNE-P orders per month. The order rate is presumably somewhat higher when churn is taken into account. This is roughly one-third of the monthly UNE order volume in New York when Bell Atlantic applied for long distance approval. NY Order ¶ 169.

all loss of dial tone results in a trouble ticket. The customer may lose dial tone but have it restored prior to submission of a trouble ticket (e.g. if the customer loses dial tone with a "D" order and then has its other service orders processed several hours thereafter).

SWBT contends that the loss of dial tone will decrease after SWBT eliminates the requirement of populating service addresses on migration orders. Ham Supp. Aff. ¶ 32. This may well be so, but the scope of any such reduction remains unknown. Issues related to service addresses are only one cause of the disassociation of service orders, and even this cause will not necessarily end with SWBT's new procedures. McMillon, Sivori & Lichtenberg Supp. Decl. ¶¶ 59-60. Service address issues can result in a loss of dial tone if the addresses on the three service orders differ. This can still occur after implementation of SWBT's address proposal because SWBT will populate the address on the C order from a database lookup in CRIS while it will populate the D order from a database lookup in "MESA" – a weekly download of addresses from CRIS that may not match the current CRIS database. In addition, the three service orders can become disassociated if SWBT employees fail to place the proper code on the orders to ensure they remain related, if CLECs supplement the due date and SWBT employees fail to change the due date on all three service orders, and for several other reasons documented in the initial declaration of Terri McMillon and John Sivori. McMillon & Sivori Decl. ¶¶ 97-106.

Once again, then, SWBT jumps the gun. MCI WorldCom believes that the service address proposal will reduce some of the problems connected with the three service order process but that many will remain. Certainly, until SWBT's proposal is implemented and shown to be successful, it cannot be a basis of section 271 approval.

D. SWBT Fails Even to Address Critical Defects in its OSS.

In its April 5 filing and its numerous prior ex partes, SWBT has failed even to address two key defects on which MCI WorldCom has focused. SWBT fails to address its inadequate process for relating multiple orders for a single customer, McMillon & Sivori Decl. ¶¶ 137-45; McMillon, Sivori & Lichtenberg Reply Decl. ¶¶ 42-45, and the high number of hours that its systems are not operational.

When a CLEC places two different orders for a customer, it cannot request that those orders be processed by SWBT on the same day if those orders are designed to flow through SWBT's systems, which is known as "MOG eligible" or "MOGable." McMillon & Sivori Decl. ¶ 143; McMillon, Sivori & Lichtenberg Reply Decl. ¶ 43. Thus, a customer may be forced to wait for a customer service representative to install service on two different occasions.

If the orders are not "MOGable," SWBT will attempt to manually relate the orders but its flawed process for doing so can lead to a vicious cycle of rejected orders. McMillon & Sivori Decl. ¶¶ 141-42; McMillon, Sivori & Lichtenberg Reply Decl. ¶ 44. Indeed, SWBT's data shows that 1.6% of rejects occur either because the "RPON (related purchase order number) has been rejected" or the "RPON has not been received." Ham Supp. Aff. att. H. The problem is far worse for CLECs needing SWBT to relate a high percentage of their orders. Over 9% of the LSRs submitted by "CLEC D," for example, were rejected for reasons connected to SWBT's defective process for relating orders. This amounted to almost 19% of the rejects experienced by that CLEC. Id. These rejects could easily be avoided if SWBT would simply adopt the solution implemented by other BOCs and hold the first order for 24 hours until the CLEC had the opportunity to transmit the related order. McMillon & Sivori Decl. ¶ 142.

A second OSS defect that SWBT mentioned in its reply comments, but failed to resolve, is the limited hours of operation for its systems. McMillon & Sivori Decl. ¶¶ 225-229. The impact of SWBT's limited hours is even more severe than MCI WorldCom initially understood. Because SWBT does not seem to have a "basket" in which it holds orders submitted during off-hours, MCI WorldCom must shut down its ordering process significantly before those off-hours arrive to ensure that all of its orders have cleared its queue by that time. McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 79. The limited hours that CLECs can transmit orders or access SWBT's pre-order interfaces significantly reduce the ability of CLECs to correct rejects efficiently – the importance of which SWBT emphasizes in its filing. McMillon & Sivori Decl. ¶ 226; Ham Supp. Aff. ¶¶ 39-41. CLECs cannot use the process that MCI WorldCom uses in New York in which employees process rejects for extended hours to ensure quick turn-around. McMillon & Sivori Decl. ¶ 226. Finally, because customers experience troubles at all times of day and night, CLECs need near-continuous access to trouble handling capabilities. McMillon & Sivori Decl.¶ 229.

Rather than resolve this problem, SWBT suggested in its February reply comments that MCI WorldCom submit a change request asking for extended hours, which MCI WorldCom has now done. McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 80. SWBT has not yet promised any action in response to this request.

E. SWBT Relies on Too Much Manual Processing.

1. SWBT Manually Processes Too Many Orders

Since the time of its initial filing, SWBT has not made any systemic enhancements to increase flow-through of orders. Important order types such as most supplemental orders (including all supplemental orders to correct manually transmitted rejects), many partial migrations, and suspend-and-restore orders still do not flow through. McMillon & Sivori Decl. ¶¶ 119-26; McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 87. SWBT's failure to enhance flow-through of supplemental orders is particularly troublesome given the continued high number of manually transmitted rejects. It also appears that other important order types, such as orders that include three-way calling, do not flow through. McMillon, Sivori & Lichtenberg Supp. Decl. ¶¶ 88-89.

SWBT argues that its flow-through rate on orders transmitted via EDI is higher than Bell Atlantic's flow-through rate. Ham Supp. Aff. ¶ 52. But there is substantial reason to doubt the accuracy of SWBT's purported flow-through data, and, in any event, that data does not capture many of the orders that drop out of its systems for manual processing. MCI WorldCom ex parte March 17, 2000, p.4; McMillon & Sivori Decl. ¶¶ 115-18; McMillon, Sivori & Lichtenberg Reply Decl. ¶¶ 35-39. Moreover, it is suspicious that unlike with other data, SWBT presents no overall flow-through data for either January or February.

2. SWBT Manually Processes Far Too Many Rejects

SWBT rejects too many orders, processes too many rejects manually, and returns those rejects belatedly. SWBT rejected 33.4% of electronic LSRs in November, 30.6% in December, 34.3% in January, and 30.5% in February. Ham Supp. Aff. ¶ 33 & att. J. In the same months, SWBT processed more than one third of these rejects manually (36%, 34.9%, 33.1% and 34.8% in November through February respectively).[12/] Performance Measures 9 and 10. SWBT has failed to return these manually processed rejects within the five hour benchmark for each of the last six months.

SWBT's poor performance with respect to rejects significantly harms CLECs. Orders that are rejected take far longer to complete especially when the rejects are manually processed. McMillon, Sivori & Lichtenberg Supp. Decl. ¶¶ 85, 87. SWBT takes more than six hours on average to manually process the rejects which are then returned to the CLECs. The CLECs must in turn determine the problem with the initial order, correct that problem – which often requires significant work by the CLEC – and re-transmit the order. Even the re-transmitted order is likely to take longer to process than a typical order. This is because SWBT manually processes all supplemental orders to correct manually processed rejects. Thus, SWBT's high reject rate, high level of manual processing of rejects, and slow return of those rejects pose a substantial barrier to CLEC entry. SWBT must provide CLECs the means to reduce rejects (including integratable

12/ This is the relevant number, not rejects for orders submitted over EDI alone. As SWBT explained in an April 17 meeting before the Texas PUC, the interface over which an order is submitted should make no difference in whether that order is rejected.

pre-order and order interfaces) and also must reduce its manual processing of rejects prior to gaining long distance entry.

SWBT responds that CLECs are capable of achieving low reject rates. It argues that the reject rate decreased between January and February, Ham Supp. Aff. ¶¶ 33-34, and that one CLEC obtained a 13.5% reject rate in February 2000. Ham Supp. Aff. ¶ 53. But the data cited above, with rates varying from 30 to 34%, refute any argument that there is a significant trend towards a reduction in rejected orders. Importantly, at least some of the limited reduction in rejects that did occur can be attributed to a mid-January "reclassification" of some rejects as jeopardies rather than to a real change in the underlying numbers.[13/] McMillon, Sivori & Lichtenberg Supp. Decl. ¶ 84. As for the "model" CLEC, SWBT's own data show that in January 2000 more than 20% of this CLEC's orders were rejected, and that in the past four months the average reject rate for this CLEC was more than 19%. Ham Supp. Aff. att. Q. The fact that one CLEC has been able to achieve a 13.5% reject rate for one month hardly demonstrates that SWBT has provided CLECs the means to reduce rejects to acceptable levels given the consistently high overall reject rates over time.

SWBT also contends that the reject rate will be reduced with the implementation of its service address proposal at the end of May and could be reduced further if CLECs pre-programmed their side of the interface to ensure submission of acceptable due dates. Ham Supp. Aff. ¶ 44. SWBT is correct that its proposed change with respect to service addresses should reduce rejects (although not as much as SWBT indicates because addresses will continue to be

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13/ MCI WorldCom favored the change, but it is not evidence of an improved reject rate. SWBT does not have a performance measure that tracks the number of jeopardies.

required on orders for feature changes subsequent to customers' initial orders). But that change has yet to be implemented. As for pre-programming of due date information, SWBT provides no reason to believe that CLECs currently are transmitting due dates that differ from those provided in the due date calendar.[14/]

In any event, regardless of SWBT's responsibility for the overall number of rejects, SWBT is certainly at fault for processing too many of these rejects manually. SWBT rightly points out that CLECs have repeatedly asked it to move edits up front in its systems so that rejects will occur quickly and mechanically. Ham Supp. Aff. ¶¶ 48-50. Nonetheless, SWBT continues to process more than one-third of rejects manually. SWBT offers no explanation as to why this is acceptable, merely claiming that manually processed rejects are not returned in as belated a fashion as it initially appears from SWBT's performance data.[15/] Ham Supp. Aff. ¶¶ 36-37.

Even if SWBT's unaudited claims are taken at face value, however, the manual processing of so many rejects nonetheless has significant consequences. The benchmark for

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14/ SWBT argues that its reject rate cannot be compared with Bell Atlantic's because Bell Atlantic's rate would be far higher if it were not correcting some CLEC errors but instead were rejecting these orders. Ham Supp. Aff. ¶ 51. SWBT provides no basis for its suggestion that the number of orders Bell Atlantic is correcting rather than rejecting is high, but in any case avoiding rejects avoids the customer-impacting delays that result from sending the order back to the CLEC and requiring the CLEC to rework it. Moreover, at the time of filing, Bell Atlantic, unlike SWBT, had demonstrated that its pre-order and order interfaces were integratable and thus that CLECs could reduce rejects if they chose to do so. Id. ¶ 175 & n.555. And, unlike SWBT, Bell Atlantic had also shown that a number of carriers with a high volume of orders had achieved low reject rates (down to 3%). Id.

15/ SWBT argues that its more than 36.65 hour average time for returning manually processed rejects in December and 28.47 hours in January was an aberration that can be attributed to a few orders that had mistakenly remained in its back-end systems for months. Ham Supp. Aff. ¶ 36.

returning manually processed rejects is five hours, rather than the one hour for electronically processed rejects. And SWBT has failed to meet even the five hour benchmark for any month (either for mean time of return or for percentage of rejects returned within the benchmark). As with all manual processes, SWBT's performance is likely to decline significantly with a substantial increase in volumes. SWBT is still processing far less than a commercial volume of orders – far lower than Bell Atlantic is processing in New York. In some respects, SWBT's performance already appears to be declining as a result of excessive manual processing. Its provisioning accuracy, for example, a measure of vital importance to customers, has decreased significantly in February and March to approximately 91%. Moreover, as discussed above, SWBT's largely manual processing of LIDB orders is resulting in a substantial number of fundamental errors.

If this section 271 application were approved with SWBT's present levels of manual processing, as well as the other systemic issues in SWBT's OSS, problems are likely to increase significantly after approval as volumes of orders increase. Just such an increase occurred in New York with over 200,000 lost and mishandled orders, and is even more likely to occur in Texas where there are more known defects. McMillon, Sivori & Lichtenberg Reply Decl. ¶¶ 53-61. SWBT's failure to provide an integratable pre-order and order interface, its high reject rate, and its deficient LIDB process force CLECs to hand-hold orders on their side of the interface. SWBT's decision to split each UNE-P order into three separate service orders and its high level of manual processing require SWBT to hand-hold orders on its side of the interface. None of this will be sustainable at high volumes. Until SWBT corrects these problems, it cannot be granted section 271 authorization.

F. Early Data from MCI WorldCom's Launch Show Additional Operational Problems.

Some key performance problems have already surfaced even with MCI WorldCom's low order volumes. In addition to the severe LIDB problems that MCI WorldCom is experiencing, the early evidence from MCI WorldCom's launch is that SWBT's OSS is not performing nearly as well as would be expected based on its performance reports.

MCI WorldCom transmitted 1099 orders the week of April 17. As of 9:00 a.m. on April 25, MCI WorldCom had not received FOCs on 8.6% of the orders on which it should have received a FOC (those that were not rejected or did not receive a jeopardy). Indeed, this number significantly understates the extent to which SWBT is returning late FOCs, because it only includes FOCs still missing on April 25, not FOCs that had been returned but were returned late. Of the 8.6% of FOCs that remained missing, most were several days late. McMillon, Sivori & Lichtenberg Supp. Decl. ¶¶ 94-95. This performance is very poor – more akin to what MCI WorldCom experienced during early trials than what SWBT is reporting.

SWBT's performance with respect to completion notices is even worse. As of the morning of April 25, MCI WorldCom had not received completion notices on 12.5% of the orders on which it should have received them (in addition to those orders on which MCI WorldCom had not even received a FOC). Many of the SOCs were several days overdue. MCI WorldCom was unable to ascertain from SWBT's toolbar whether SWBT had provisioned these orders and failed to return SOCs or whether SWBT had not yet provisioned the orders even though the due date on these orders had passed. Id. ¶¶ 96-97.

Thus, MCI WorldCom's experience, while limited, is not encouraging. To date, it confirms MCI WorldCom's fears that the systemic defects in SWBT's OSS will cause substantial problems. If performance does not improve, MCI WorldCom's hope to be able to substantially expand sales in Texas and to maintain sales at commercial volumes will not be possible.

II. SWBT CONTINUES TO SEEK "GLUE" CHARGES

SWBT's claim in ex parte meetings with the Commission that it has corrected the pricing problems identified by MCI WorldCom and others is a model of misdirection. SWBT has not withdrawn its clearly unlawful glue charges. SWBT has merely suspended temporarily the collection of non-recurring charges for existing combinations. This offer is extended only until the Texas PUC decides whether to re-approve its $20.47 non-recurring loop/cross-connect/switch charge for existing combinations or to approve another charge. Importantly, SWBT's offer is made subject to true-up. Thus, the full cost to CLECs ordering UNE-P is unknown – even for customers added now while these charges are not being collected – because SWBT intends to collect from CLECs whatever non-recurring charges the PUC approves, retroactively as well as prospectively.

While the Commission has determined that in proper circumstances interim rates may be acceptable, none of the indicia relied on by the Commission to find sufficient certainty as to Bell Atlantic's interim xDSL rates exists here. See NY Order ¶ 258. The rates at issue do not affect "a few isolated ancillary items," id., but are a key component of the cost of providing competitive service to residences and small businesses. In addition, the permanent rates, which are no longer applicable, were not in compliance with the Commission's rules, but were nonetheless defended

by SWBT against court challenges even after the Commission's rule was upheld by the Supreme Court in AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999). See MCI WorldCom Reply Comments at 38 & n.29. This is not even a situation in which a state regulatory agency has established interim rates subject to a more complete review. Rather, SWBT has temporarily suspended collection of a clearly unlawful rate while it vigorously pursues reinstatement of the charges.[16/]

Further, despite not collecting a charge at this time, SWBT has not agreed that there should be no charge. Instead, SWBT continues to defend all of its glue charges, both for existing combinations and UNEs not currently combined, before the PUC.[17/] Although SWBT now acknowledges that the switch, cross-connect and loop non-recurring charges for existing combinations were approved on the now-discredited ground that SWBT is entitled to tear apart

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16/ SWBT's temporary abstention from collecting the excessive charges is reminiscent of the illusory "promotional discounts" SBC and Ameritech offered as part of their merger. Although SBC claimed its "promotion" of UNE-P would enhance competition, the actual price was left to future negotiation and arbitration. Moreover, the promotions are discriminatory and anticompetitive because they limit the services that can be provided using UNE-P, the number of combinations available to CLECs, and the length of time that UNE-P would be available. See Letter dated September 20, 1999 from Lisa B. Smith, MCI WorldCom, Inc. to Magalie Roman Salas, FCC (CC Docket No. 98-141).

17/ The Texas PUC is considering the issue in Docket No. 21622, a proceeding initiated after AT&T filed a complaint in November 1999, challenging SWBT's non-recurring switch, cross-connect, and loop charges as inconsistent with the Supreme Court's decision in Iowa Utils. Bd. That docket has since been consolidated with a challenge to those and other glue charges by MCI WorldCom, originally brought as a section 252 proceeding in district court, but remanded by the Fifth Circuit to the PUC in February for further proceedings. MCI WorldCom, by agreement, filed a complaint the following month outlining its requested relief (opened as Docket No. 22290 before consolidation). At the request of the PUC, the parties have identified issues they believe the commission should consider on remand, addressed questions of evidence and effective dates of rate changes, and argued in favor or against consideration of individual issues. The PUC has not yet determined which charges will be reopened.

and recombine existing combinations, SWBT Br. at 3-4, Texas PUC Docket No. 21622 (filed April 5, 2000), its position is, for all practical purposes, unchanged. SWBT continues to defend its right to impose non-recurring charges to reflect the "cost involved in performing the combining functions" for loops, cross-connects, and switches that are already combined. Id. at 6. SWBT has proposed a proceeding that would extend into the future the risks to CLECs of unknown costs for entry into residential and small business markets, while SWBT prepares entirely new cost information and rate proposals. Moreover, SWBT has taken the position that it no longer carries the burden of proving that the previously approved charges are cost-based. Rather, SWBT argues, that burden has shifted to CLECs to show "that SWBT's costs of providing the relevant UNEs in existing combinations are different from the costs set in the Mega-Arbitration." Id. at 9.[18/]

SWBT also continues to defend its imposition of these three non-recurring charges, plus its COAC charge, for combining UNEs that are not currently combined, pressing the PUC to deny MCI WorldCom's and AT&T's request that these charges be reexamined in the current proceeding. Id. at 15. Although acknowledging that the COAC charge "may not have been found to be cost-based," SWBT Answer, PUC Docket No. 21622, at 3 n.2 (Apr. 5, 2000), SWBT has told the PUC that it is not permitted by law to revisit the charge. SWBT 21622 Br. 16. In doing so, it mischaracterizes the Eighth Circuit's decision in Iowa Utils. Bd. as determining that the ILECs need not combine UNEs that are not currently combined, SWBT 21622 Br. 4, whereas that court issued the quite different decision that ILECs could choose not to combine UNEs for

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18/ The charges at issue are in addition to a service order charge, which at $2.56, is more than adequate to recover all non-recurring costs caused by a simple customer migration.

CLECs if they permitted CLECs access to their networks to perform those functions themselves[19/] – permission SWBT has not granted. The Eighth Circuit did not condone SWBT's current position that it is free to both deny CLECs access to its network and to refuse to combine UNEs at cost-based prices.

Further, SWBT unsupportably claims that the Ninth Circuit decision, MCI Telecommunications Corp. v. U.S. West, 204 F.3d 1262 (9th Cir. 2000), is ultra vires. SWBT 21622 Br. 14. The Ninth Circuit held that requiring ILECs to provide new combinations is consistent with the statute (which would also require the work to be provided at cost-based rates). In claiming that the Ninth Circuit lacked jurisdiction, SWBT confounds jurisdiction over cases with a court's power to interpret governing law. The Ninth Circuit has no jurisdiction to hear an appeal of the FCC's Local Competition Order, but it did not do so; it heard an appeal of a section 252 decision. In deciding that case, it interpreted the statute governing the issues before it, a power confined only by a decision from the Supreme Court – not by decisions of the Eighth Circuit or any other sister court of appeals.

Whatever its posture before this Commission, SWBT's position before the PUC is firm. It claims the right to charge non-recurring charges for combining loops, cross-connects, and switches that are already combined and the right to impose non-cost-based charges for combining UNEs that are not currently combined. This is not an acceptable basis on which to grant SWBT section 271 authority.

19/ See Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997), rev'd in relevant part, 525 U.S. 366 (1999).

III. SWBT HAS PLACED UNREASONABLE AND DISCRIMINATORY RESTRICTIONS ON ACCESS TO LOOP-TRANSPORT COMBINATIONS.

SWBT has placed discriminatory and unreasonable restrictions on access to combinations of loop and transport unbundled network elements (often referred to as enhanced extended links, or "EELs") in violation of checklist items (ii), (iv) and (v), and in violation of the Commission's rules implementing the unbundling requirements of section 251(c)(3). The practical effect of these restrictions is to prevent MCI WorldCom and other CLECs from using loop-transport combinations to provide local telecommunications services to business customers.

In the UNE Remand Order the Commission made clear that requesting carriers finally should be able to take advantage of the Commission's "combination" rule, Rule 315(b), to use combinations of unbundled network elements efficiently to provide competing local services. The Commission noted with disapproval that

> [e]xperience over the last year demonstrates that the incumbent LECs have refused to provide access to network elements so that competitors could combine them, except in situations where competitive LECs have collocated in the incumbent's central offices.

UNE Remand Order ¶ 482. The Commission further stressed that

> to the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 315(b) require the incumbent to provide such elements to requesting carriers in combined form. . . . In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices.

Id. ¶ 480.

Addressing the most common discriminatory practice used by the ILECs to make combinations of network elements practically unavailable to incumbents, the Commission further

emphasized that ILECs may not limit to collocation arrangements a competitor's ability to access network elements in order to combine them. Id. ¶ 482 n.973.

While the Commission thus spoke in the clearest possible terms about the importance of the availability of loop-transport combinations for the provision of local service and xDSL-based advanced services, it created a different provisional regime designed to prevent interexchange carriers ("IXCs") from converting their long-distance access services purchased from the ILECs to UNEs. UNE Remand Supp. Order ¶ 2. But the Commission's provisional use restriction on UNEs as a substitute for access services was carefully tailored in an effort to preserve requesting carriers' rights to use UNE combinations for all other telecommunications purposes. Thus, while prohibiting the use of loop and transport combinations to provide access to interexchange services, the Commission expressly allowed such conversions when they facilitated the provision of local service:

> This constraint does not apply if an IXC uses combinations of unbundled loop and transport network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer. It therefore does not affect the ability of competitive LECs to use combinations of loop and transport (referred to as the enhanced extended link) to provide local exchange service. It also does not affect the ability of competitive LECs that are collocated and have self-provided transport (or obtained it from third parties), but are purchasing unbundled loops, to provide exchange access service.

UNE Remand Supp. Order ¶ 5.

Unfortunately, SWBT has improperly used this provisional regime governing access services as a pretext to continue to deprive MCI WorldCom and other CLECs of access to loop-transport combinations for local services in direct contravention of Commission rules. SWBT's

unlawful practices are set out on its web site[20/] and in a March 22, 2000 letter to MCI WorldCom ("Williams Letter").[21/] There it has imposed three sets of restrictions not contained in the Commission's rules and not necessary to prevent CLECs from using UNE combinations to provide traditional special access services. Instead, these proposals make it impossible for CLECs to use UNE combinations to provide any services, including local services.

First, SWBT imposes discriminatory collocation requirements on all combined circuits[22/] – precisely the same requirement the Commission expressly rejected in the UNE Remand Order. SBC requires collocation whether or not the circuit involved is carrying significantly local traffic. The fact that a particular circuit terminates or does not terminate in a collocation arrangement obviously does not mark the circuit as an access circuit or a local circuit. The Commission previously rejected BellSouth's section 271 applications because BellSouth required CLECs who wished to lease UNE combinations to collocate. See, e.g., LA II Order ¶¶ 164-70 (rejecting collocation requirement and citing prior Commission orders). It should reject SWBT's current application for the same reason.

Next, SWBT denies CLECs the ability to continue to combine or "commingle" a leased UNE circuit currently multiplexed onto a higher capacity transport circuit, thereby requiring that virtually all existing local loops be disconnected from existing transport and reconnected to new

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20/ See https://clec.sbc.com/clechb/unrestr/custguide/ (April 19, 2000).

21/ Letter dated March 22, 2000 from Marilyn Williams, SBC, to Paula Rice, MCI WorldCom (Tab B hereto).

22/ See Williams letter at 2 ("The circuits must be an arrangement from the customer premise to collocation arrangement").